

RECEIVED
IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

MAY 12 PM 3:59

IN RE)	
)	
UNITED CITIES GAS COMPANY,)	T.R.A. DOCKET ROOM
a Division of ATMOS ENERGY)	
CORPORATION INCENTIVE)	Consolidated Docket Nos 01-00704 and
PLAN (IPA) AUDIT)	02-00850
	(
)	
UNITED CITIES GAS COMPANY,)	
a Division of ATMOS ENERGY)	
CORPORATION, PETITION TO)	
AMEND THE PERFORMANCE)	
BASED RATEMAKING)	
MECHANISM RIDER)	

**RESPONSE OF ATMOS ENERGY CORPORATION TO THE CONSUMER
ADVOCATE'S MOTION TO COMPEL**

Pursuant to the hearing officer's May 10, 2004 ruling, Atmos Energy Corporation ("Atmos" or "the Company") provides this response to the May 12, 2004 Motion to Compel filed by the Consumer Advocate and Protection Division ("CAPD").

The CAPD has moved for an order compelling the Company to provide further response to Request to Produce No 1 and Interrogatory No. 6. Each request is discussed separately below

I. Request to Produce No. 1

Request to Produce No 1 asked the Company to produce "[c]opies of any and all documents identified in your answers or responses to these Interrogatories" In response to Interrogatory No. 3, the Company identified, among other documents, the "transportation contracts at issue" In response to Request for Produce No 2, the Company stated that other than the financial documents attached to its response, "[a]ll other documents identified are of record

in Docket Nos 97-01364, 01-00704, 02-00850 or have been previously provided to the CAPD.” The transportation contracts the Company identified in its response to Request to Produce No. 1 have previously been provided to the CAPD. As such, the Company’s response is sufficient. However, in the interest of moving this matter forward as soon as possible, the Company will provide a second set of copies of the contracts to the CAPD no later than close of business Thursday, May 13, 2004.

II. Interrogatory No. 6

Interrogatory No. 6 asked the Company to:

Explain in detail the extent to which FERC Order Modification of Negotiated Rate Policy, Natural Gas Pipeline Negotiated Rate Policies and Practices, 104 FERC ¶ 61,134 (2003) may be relevant to the question of whether the proposed settlement is in the public interest.

The Company provided the following response.

It is the Company’s position that the referenced FERC Order is not relevant to the question of whether the proposed settlement should be approved

In its motion to compel, the CAPD argues that the Company should have to explain why the referenced FERC order is not relevant. That is not what the interrogatory asked. The interrogatory asked the Company to explain the extent to which the FERC order might be relevant. It is the Company’s position that the FERC order is not relevant at all. The Company has therefore fully answered the interrogatory. What the CAPD is attempting to do is force the Company to guess what position the CAPD will take with regards to the FERC order and provide a response to whatever argument the CAPD may make. If the CAPD thinks the FERC order is relevant, it can explain why in its objection to the settlement agreement, and the Company will respond. The CAPD cannot force the Company to take a position with regard to FERC order the Company has stated it believes is not relevant at all. The CAPD must prepare its own arguments based on this FERC order. It cannot force the Company and Staff to formulate those arguments

for it. See Hendler v. United States, 952 F.2d 1364, 1381 (Fed. Cir. 1991) (holding that “[t]o use discovery as an alternative to its own preparation of a defense or to harass comes close to governmental abuse of the judicial process.”)

III. Response to the Remaining Arguments Raised by the CAPD’s Motion to Compel

The CAPD’s motion to compel clearly asks that the hearing officer compel the Company to provide further responses to just the two discovery requests referenced above. However, the remainder of the CAPD’s motion is devoted to the CAPD’s attempt to avoid having to file its response to the joint motion to approve the settlement on Monday, May 17, 2004, as required by the procedural schedule in this case. The Company objects to any alteration to the procedural schedule in this case. The CAPD must be forced to state its objections to the proposed settlement.

In support of its argument that it should be excused from filing its response on Monday, the CAPD asserts only that “[u]ntil AEC and the TRA Staff settle on a standard which forms the ground(s) for granting their motion the Consumer Advocate should not be required to respond.” (CAPD Mot. to Compel p. 6.) The Company has stated repeatedly that the grounds for the motion are contained in the motion and accompanying exhibits. The facts supporting those grounds are contained in the order and tariffs in the original PBR docket (Docket No. 97-01364) and all documents filed by the Company in Docket Nos. 01-00704 and 02-00850. (Atmos’ Resp. to CAPD Int. No. 1.) The Company has stated the legal standard which it believes applies to the motion it has filed. (See Atmos’ Suppl. Resp. p. 1.) At some point the CAPD must state in writing what its objection to the settlement is. If the CAPD’s objection is that the grounds are insufficient, it should set forth that argument in writing, and the Company will respond. Instead, the CAPD continues to make frivolous and spurious arguments in a desperate attempt to obstruct

the progress of this matter and avoid having to assert its objections to the proposed settlement agreement. The CAPD has even gone so far as to argue that the motion to approve the settlement be summarily denied, without the CAPD ever having stated any particular objection to its merits.

The Company has fully responded to all discovery requests submitted by the CAPD. On March 8, 2004, the Company and the Staff jointly presented a motion for approval of a settlement agreement to resolve two dockets, one of which has been pending for over 2 ½ years. Two months have now passed since the filing of the joint motion. Both the Company and Staff have provided the CAPD with more than enough information to allow the CAPD to state its objection to the settlement. The Company respectfully requests that the hearing officer refuse the CAPD's attempts to avoid its obligation to assert its objection, and require that the objection be filed on Monday, May 17, 2004.

Respectfully submitted,

BAKER, DONELSON, BEARMAN
CALDWELL, & BERKOWITZ, P.C.

By: 
Joe A. Conner, TN BPR # 12031
Misty Smith Kelley, TN BPR # 19450
1800 Republic Centre
633 Chestnut Street
Chattanooga, TN 37450-1800
(423) 752-4417
(423) 752-9527 (Facsimile)
jconner@bakerdonelson.com
mkelley@bakerdonelson.com
Attorneys for Atmos Energy Corporation

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served via U.S. Mail, postage prepaid, upon the following this the 12th day of May, 2004:

Russell T Perkins
Timothy C Phillips
Shilina B. Chatterjee
Office of the Attorney General
Consumer Advocate & Protection Division
P O. Box 20207
Nashville, TN 37202

Randal L. Gilliam
Staff Counsel
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243


